Technical Guidance

Pesticides Act and Ontario Regulation 63/09 Public Works

May 2011

Purpose

This technical guidance provides regulatory information for public works commissioners and employees authorized to use pesticides that affect public works. Ontario's cosmetic pesticides ban took effect April 22, 2009. The requirements of the ban are detailed in the Pesticides Act, which was amended by the Cosmetic Pesticides Ban Act, 2008 and in Ontario Regulation 63/09 (O. Reg. 63/09).

Update

Starting in 2011, new rules for annual reporting of pesticide use that affect public works will take effect. As set out in section 25 of O. Reg. 63/09, if a Class 9 pesticide is used with respect to a public work, the owner or operator of the public work must prepare an annual report before April 1, 2011 which summarizes the use of Class 2, 3, 4, 5, 6, and 7 pesticides in land exterminations during the previous year (i.e. between January 1, 2010 and December 31, 2010). This is an on-going requirement that must be completed every year.

Subsection 74(3) of O. Reg. 63/09 specifies that as of April 22, 2011, warning signs (i.e. Sign D and F) can no longer deviate from the versions of the signs referred to in subsection 1(5) of O. Reg. 63/09. In other words, if warning signs are required to be posted to provide public notice of a land extermination, the law requires that the version of the warning signs posted on the MOE's website be used.

Classification of pesticides

A pesticide product must be registered by Health Canada's Pest Management Regulatory Agency and classified by the Ministry of the Environment (MOE) to be sold and used in Ontario (please refer to s.6 of the Pesticides Act and s.9 of O. Reg. 63/09). Products must be used according to label directions and for purposes allowed under the ban.

As set out in subsection 4(5) of O. Reg. 63/09, Ontario has established a pesticide classification system consisting of eleven classes under provincial legislation as set out below.

- Class 1 pesticides are products intended for manufacturing purposes
- Class 2, 3 and 4 pesticides are restricted or commercial products
- Class 5 and 6 pesticides are domestic products intended for household use

- Class 7 pesticides are controlled sale products (domestic or restricted)
- Class 8 pesticides are domestic products that are banned for sale and use
- Class 9 pesticides are ingredients in products for use only under exceptions to the ban
- Class 10 pesticides are ingredients in products for the poisonous plant exception
- Class 11 pesticides are ingredients in products for cosmetic uses under the ban

Public Works Exception

As set out in subsection 7.1(2) of the Pesticides Act, there is an exception to the ban on the use of Class 9 pesticides in order to promote health or safety. Section 17 of O. Reg. 63/09 further clarifies that the promotion of health or safety means, among other things, the destruction, prevention or control of plants, fungi or animals that affect public works. This exception does not apply to the use of Class 9 pesticides on areas such as lawns and gardens including trees, shrubs and ornamental plantings unless these plants pose a health or safety risk as set out in O. Reg 63/09.

Public work is defined in section 1 of O. Reg. 63/09 to mean "a structure that provides a benefit to the public and that is owned or operated by the Government of Ontario or Canada or by any board or commission thereof, or by any municipal corporation, public utility commission or by private enterprise and includes any railway, canal, highway, bridge, power works including all property used for the generation, transformation, transmission, distribution or supply of hydraulic or electrical power, gas works, water works, public utility or other work." A school is not considered a public work.

Under the public works exception set out in s.23 of O. Reg. 63/09, it may be necessary to use Class 9 pesticides to:

- prevent damage to the structural integrity of a public work, if the potential damage caused to the public work by the plant, fungus or animal would place the health or safety of a person at risk;
- facilitate essential maintenance of a public work, if the plant, fungus or animal would interfere with or prevent the maintenance;
- allow for emergency access to a public work, if the plant, fungus or animal would interfere with or prevent the access; or
- ensure the security of a public work, if the plant, fungus or animal would place the security at risk.

For example, it may be necessary to use a Class 9 pesticide to control vegetation on rights of way or highways in order to:

- ensure clear sight lines including signs and intersections;
- promote water flow, drainage and drying, and prevent road flooding;

- allow motorists to see animals at the roadside;
- facilitate winter snow removal maintenance; or
- reduce snow accumulation.

Similarly, it may be necessary to use a Class 9 pesticide under the public works exception for the maintenance of in-ground wood poles, in order to control carpenter ants and fungi that may cause damage.

It should be noted that subsection 23(2) of O. Reg. 63/09 prohibits the use of Class 9 pesticides on a portion of a highway to which pedestrians have access on a regular basis (e.g., walking path, sidewalk, intersecting driveway, mailbox or school bus waiting area) or other portions of a highway where the public is invited to stop (e.g., rest or picnic area). However, in general, this prohibition would likely not apply if the area were closed off from public access until warning signs notifying the public were removed (i.e., 48 hours have elapsed from time of pesticide use).

Pesticide Use on Public Works Property

A product that contains a Class 11 pesticide (includes biopesticides and certain lower risk pesticides) may be used for cosmetic purposes to manage weeds, insects and plant diseases on public works property.

A public works employee is required to post a non-residential area notice sign (Sign E) on non-residential area land to notify visitors and passers-by of pesticide use when using Class 11 pesticides in a land extermination.

Class 9 pesticides may be used under the health or safety – public works exception in accordance with the requirements set out in section 24 and 25 of O.Reg. 63/09 and described below.

<u>IPM Certification</u>

Section 24 of O. Reg. 63/09 states that a person may only take advantage of the health or safety – public works exception to the ban if he or she holds a licence that authorizes the performance of the extermination and is certified by an integrated pest management (IPM) body (or is a person working under the written instructions of such a person). For example, to use a Class 9 pesticide under this exception an industrial vegetation licensed exterminator must be certified by an approved Integrated Pest Management (IPM) body such as the IPM Council of Canada.

The IPM Council of Canada certifies licensed exterminators who successfully complete the approved IPM examination. To maintain certification, a minimum of eight Continuing Education Credits must be obtained each year, or the certification exam re-written if the required number of credits is not obtained.

In accordance with section 24 of O. Reg. 63/09, the IPM certified licensed exterminator must have the IPM certificate or a copy of it readily available at the extermination site. If he or she is not present at the extermination site, written instructions and a copy of the IPM certificate must be provided to the persons using the pesticide.

An IPM certified industrial vegetation licensed exterminator may:

- have an unlimited number of industrial vegetation licensed exterminators working under his or her written instructions.
- supervise up to a maximum of three technicians or trainees in accordance with sections 46 and 48 of O. Reg. 63/09.

Note also that, section 74 of O. Reg. 63/09 requires that an industrial vegetation licensed exterminator post a non-residential area warning sign (Sign F) on non-residential area land to notify visitors and passers-by of the use of a Class 9 pesticide.

Annual Report

As set out in section 25 of the O. Reg. 63/09, beginning in 2011, if a Class 9 pesticide is used with respect to a public work, the owner or operator of the public work must prepare an annual report before April 1st summarizing the use of Class 2, 3, 4, 5, 6,and 7 pesticides on the public works property. The report must include the following information:

- the name of each pesticide ingredient used
- the quantity of each pesticide ingredient used
- the reason for using each pesticide ingredient
- the method of use for each pesticide ingredient
- the location of all application areas
- an explanation of how the use of each pesticide will be minimized in the future
- the name, contact information, and signature of the IPM certified industrial vegetation licensed exterminator

The IPM Council of Canada public works annual report form has been approved under subsection 25(3) of O. Reg. 63/09 and is available from the IPM Council of Canada.

In accordance with subsection 25(5), a copy of the annual report must be kept at the head office of the owner of the public work for at least five years after it has been prepared, and must be given to any person free of charge within seven days after the request.

Compliance and Enforcement
To report non-compliance of pesticide use, please contact your MOE District Office during regular business hours. After business hours, call the MOE's Pollution Hotline at 1-866-MOE-TIPS (1-866-663-8477).

For more information:
Visit the MOE's website for additional information on topics such as:
- Pesticide signage
- Pesticide classes and database

For information on the IPM Council of Canada Certification Program contact:
Address: IPM Council of Canada
25 Brown Street, Box #7
Milton, ON L9T 2Y3
Phone: 416-919-3832
Email: info@ipmcouncilcanada.org
Website: www.ontarioipm.com
For information on how to apply to become an IPM certified licensed exterminator for public works contact:
IPM Accreditation Program
c/o University of Guelph Ridgetown Campus
120 Main Street East
Ridgetown, ON N0P 2C0
1-866-385-4762 or 519-674-1538
Fax: 519-674-1585
ipmap@ridgetownc.uoguelph.ca

A number of fact sheets and suggestions on caring for lawns and gardens are available on the MOE's website for specific audiences.

Direct questions about the cosmetic pesticides ban to the MOE's Public Information Centre at 1-800-565-4923 or 416-325-4000 (press 0 to talk to an information officer).

This technical guidance is for information only and is not legal advice. Interested parties are advised to refer to the Pesticides Act and O. Reg. 63/09 to address specific circumstances.

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